IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17695 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DEVENDRA @ DEVO ASLAJI PRAJAPATI

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 17695 of 2003

MR SANJAY PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS MITA S PANCHAL AGP for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 13/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 11/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Odhav Prohibition Police Station at C.R.No.5130 / 2003 on 08/11/03 for an offence punishable u/s.66, 65 and 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. During the course of arguments, the learned advocate for the petitioner has argued that the present petitioner is on par with the petitioner / detenu of S.C.A.No.17651 / 2003. It is his case that the present petitioner and the petitioner in the aforesaid petition, both were co-accused in the aforesaid prohibition case and that the two witnesses who had rendered statements against the petitioner of S.C.A.No.17651 / 2003 had also rendered statements against the present petitioner and that their statements are also common against both of

them. Therefore, he argues that the case of the petitioner is on par with the case of the petitioner in the aforesaid petition.

7. On going through the petition, it is amply clear that the petitioners in both the petitions are co-accused and the statements of the witnesses are also common against both of them. Therefore, the case of the petitioner is on par with the petitioner of S.C.A.No.17651 / 2003. Therefore, on the principle of parity, when the two petitioners are equally situated and when both of them are sailing in the same boat and when the order of detention against the petitioner of S.C.A.No.17651 / 2003 has been allowed, then the petition of the present petitioner is also required to be allowed.

10. For the foregoing reasons and for the reasons recorded in S.C.A.No.17651 / 2003 , this petition is allowed. The impugned order of detention dated 11/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Devendra Devo Aslaji Prajapati, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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